

ORDINANCE NO. 15-22

AN ORDINANCE CONFIRMING THE ASSESSMENT LIST AND LEVYING AN ASSESSMENT AGAINST ONE OR MORE PROPERTIES IN THE WEST VALLEY CITY, UTAH VOLUNTARY ASSESSMENT AREA (HUNT 1920 LLC, C-PACE) 2015-1" (THE "VOLUNTARY ASSESSMENT AREA") TO FINANCE THE COSTS OF ACQUIRING, CONSTRUCTING AND INSTALLING CERTAIN ENERGY EFFICIENCY UPGRADES AND/OR RENEWABLE ENERGY SYSTEMS AND RELATED IMPROVEMENTS (COLLECTIVELY, THE "IMPROVEMENTS") TO BE OWNED BY ONE OR MORE PROPERTY OWNERS; ESTABLISHING A RESERVE FUND; PROVIDING FOR CERTAIN REMEDIES UPON DEFAULT IN THE PAYMENT OF ASSESSMENTS; ESTABLISHING THE EFFECTIVE DATE OF THIS ORDINANCE; AND RELATED MATTERS.

WHEREAS, the City Council (the "Council") of West Valley City, Utah (the "City"), pursuant to the Assessment Area Act, Title 11 Chapter 42, Utah Code Annotated 1953, as amended (the "Act"), and pursuant to a resolution adopted on June 23, 2015 (the "Designation Resolution"), designated the Voluntary Assessment Area after having obtained from each owner of one or more properties to be assessed within the Voluntary Assessment Area an executed Acknowledgement, Waiver and Consent Agreement (the "Waiver and Consent") in the form attached to the Designation Resolution as Exhibit B; and

WHEREAS, the Council of the City has now determined the total estimated cost of the Improvements and desires to assess one or more properties, each owner of which has executed a Waiver and Consent, and has prepared an assessment list of the assessments to be levied to finance the cost of the Improvements; and

WHEREAS, the Council now desires to confirm the assessment list and to levy said assessments in accordance with this assessment ordinance:

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WEST VALLEY CITY, UTAH:

Section 1. Determination of Costs of the Improvements. The Council has determined that the estimated acquisition, construction, and installation costs of the Improvements within the Voluntary Assessment Area, including overhead costs, is \$100,500, all of which shall be levied against the properties benefited within the Voluntary Assessment Area.

Section 2. Approval of Assessment List; Findings. The Council confirms and adopts the assessment list for the Voluntary Assessment Area, a copy of which is attached hereto as Exhibit B and incorporated herein by reference (the "Assessment List"). The Council has determined that the Assessment List is just and equitable; that

each piece of property to be assessed within the Voluntary Assessment Area will be benefited in an amount not less than the assessment to be levied against said property; and that no piece of property listed in the Assessment List will bear more than its proportionate share of the cost of Improvements.

Section 3. Levy of Assessments. The Council does hereby levy an assessment against each parcel of property identified in the Assessment List. Said assessments levied upon each parcel of property therein described shall be in the amount set forth in the Assessment List. The assessments are levied upon each parcel of property in the Voluntary Assessment Area in accordance with the benefit received from the Improvements.

Section 4. Amount of Total Assessments. The assessments do not exceed in the aggregate the sum of: (a) the estimated contract price of the Improvements; (b) the acquisition price of the Improvements; (c) the reasonable cost of (i) utility services, maintenance, and operation to the extent permitted by the Act and (ii) labor, materials, or equipment supplied by the City, if any; (d) the price or estimated price of purchasing property; (e) any connection fees; (f) overhead costs not to exceed fifteen percent (15%) of the sum of (a), (b), (c) and (e); (g) an amount for contingencies of not more than ten percent (10%) of the sum of (a) and (c); (h) an amount sufficient to fund a reserve fund; and (i) incidental costs incurred by the owners of the property identified in the Assessment List to satisfy the City's requirements for inclusion in the Voluntary Assessment Area, if any.

Section 5. Method and Rate. Benefited properties will be assessed per parcel as follows:

<u>Improvements</u>	<u>Assessment</u>	<u>Method of Assessment</u>
All above-described Improvements	\$100,500	Per Parcel

Section 6. Payment of Assessments.

(a) The City Council hereby determines that it is in the best interest of the City and the owners of the property identified in the Assessment List to have assessments paid over a period of longer than a ten (10) years, and have elected to have the assessments paid over a period of not more than twenty (20) years from the effective date of this Ordinance. Assessment payments shall be payable as to interest semiannually on each June 1 and December 1 beginning December 1, 2015, and as to principal semiannually on each December 1 and June 1, beginning June 1, 2016, such that the aggregate semi-annual assessment payments shall be in substantially equal amounts, subject, however, to adjustment as a result of prepayment of assessments. Interest on the unpaid balance of the assessments shall accrue at the same rate or rates as shall be borne by the assessment bonds anticipated to be issued by the City for the Voluntary Assessment Area (the "Assessment Bonds").

(b) All unpaid installments of an assessment levied against any piece of property may be paid prior to the dates on which they become due, but any such prepayment must include an additional amount equal to the interest which would accrue on the assessment to the next succeeding date on which interest is payable on the Assessment Bonds plus such additional amount as, in the opinion of the City Treasurer, is necessary to assure the availability of money to pay interest on the Assessment Bonds as interest becomes due and payable, plus any premiums required to redeem the Assessment Bonds on their first call date.

(c) In the event all or any portion of the property assessed hereunder is subdivided into smaller parcels as evidenced by a subdivision plat approved by the Council and recorded in the Salt Lake County Recorder's office, the Council may elect, at its discretion, to allocate the assessment balance of the previously undivided property to said smaller parcels on a proportionate basis based on acres allocated to said smaller parcels by adopting an amendment to this Ordinance approving such allocation. The required annual assessment payments for each smaller parcel shall be based on acres allocated by the City to said smaller parcel, so that the aggregate total of all of the annual assessment installments for all of the smaller parcels will equal the total annual assessment for the previously undivided property. When an assessment lien is perfected for each of the smaller parcels, the total assessment levied against the previously undivided property will be released, having been replaced by the aggregate of the assessments allocated to each of the smaller parcels. A release of the new assessment lien for any subdivided parcel will be delivered by the City at the time the assessment balance for such subdivided parcel is paid in full.

(d) If prepayment of an assessment prior to the assessment payment date, or any part thereof, arises out of a need of the property owner to clear the assessment lien from a portion (the "Release Parcel") of an assessed parcel (the "Assessed Parcel"), the assessment lien on the Release Parcel may be released by the City, as follows:

(i) The property owner shall submit the legal description of the Release Parcel which shall include the total acres allocated by the City to the Release Parcel.

(ii) The property owner shall prepay an assessment applicable to the Release Parcel calculated by the City Treasurer as follows: the amount of the prepayment calculated pursuant to Section 6(b) herein for the entire Assessed Parcel less any previously paid regularly scheduled payments multiplied by the percentage calculated by dividing the Acres of the Release Parcel by the total Acres of the entire Assessed Parcel.

(iii) The partial release of lien upon payment of the prepayment amount determined under subparagraph (ii) above shall not be permitted, except as otherwise provided in this paragraph, if the fair market value of the Acres of the Assessed Parcel, after release of the Release Parcel, is less

than three times the sum of (A) the remaining unpaid assessment on such Assessed Parcel, plus (B) any other unpaid assessment liens on such Assessed Parcel. In determining the value of the Acres of the Assessed Parcel, the City Treasurer of the City is entitled to, but need not rely on, credible evidence or documentation presented by the owner of said parcel. If the City Treasurer determines that the proposed partial release does not comply with the requirements of this paragraph, such partial release may still be permitted if the owner prepays a larger portion of the assessment in order to clear the assessment lien from the Release Parcel, all as determined by said Treasurer.

(iv) Prepayments of assessments shall be applied first, for the payment of the principal and interest next coming due on the Assessment Bonds, and second for the redemption of the Assessment Bonds, in whole or in part, on the first redemption date thereof in accordance with Section 2.5(c) of the Master Resolution dated as of June 1, 2015. As prepayments are paid and applied against the payment of the Assessment applicable to the Release Parcel, the Release Parcel may be released from the lien of the assessment in accordance with this subparagraph (d), and the original assessments levied against the remaining Assessed Parcel shall remain unpaid.

(e) The City Council hereby determines that in the event title to all or any portion of the Assessed Property hereunder is voluntarily transferred to another person or entity, the transferor of said assessed property shall be required to prepay that portion of the assessment applicable to the transferred parcel.

Section 7. Default in Payment. If a default occurs in the payment of any assessment when due, the City Treasurer, on behalf of the Council, may declare the unpaid amount to be immediately due and payable and subject to collection as provided herein. In addition, the City Treasurer, on behalf of the Council, may accelerate payment of the total unpaid balance of the assessment and declare the whole of the unpaid principal and interest then due to be immediately due and payable. Interest shall accrue and be paid on all amounts declared to be delinquent or accelerated and immediately due and payable at the same rate of interest as are applied to delinquent real property taxes for the year in which the assessment payment becomes delinquent (the "Delinquent Rate"). In addition to interest charges at the Delinquent Rate, costs of collection, as approved by the City Treasurer on behalf of the Council, including, without limitation, attorneys' fees, trustee's fees, and court costs, incurred by the City or required by law shall be charged and paid on all amounts declared to be delinquent or accelerated and immediately due and payable.

Upon any default, the City Treasurer shall give notice in writing of the default to the owner of the property in default as shown by the last available equalized assessment list of the City. Notice shall be effective upon deposit of the notice in the U.S. Mail, postage prepaid, and addressed to the owner as shown on the last completed real property assessment rolls of Salt Lake County. The notice shall provide for a period of thirty (30)

days in which the owner shall pay the installments then due and owing, after which the City Treasurer, on behalf of the City, may immediately initiate a sale of the property as provided in Title 59, Chapter 2, Part 13, Utah Code Annotated 1953, as amended or sale the property pursuant to Section 11-42-502(1)(c) and related pertinent provisions of the Act, in the manner provided for actions to foreclose trust deeds. The Council hereby designates a trustee to carry out such foreclosure, and said trustee shall be deemed to have a power of sale and all other rights, power, and authority necessary to legally and lawfully foreclose the lien for delinquent assessments. If for any reason the trustee cannot perform the powers and responsibilities herein provided, it may appoint, with the consent of the Council, a qualified trustee to serve as trustee. If at the sale no person or entity shall bid and pay the City the amount due on the assessment plus interest and costs, the property shall be deemed sold to the City for these amounts. The City shall be permitted to bid at the sale. So long as the City retains ownership of the property, it shall pay all delinquent assessment installments and all assessment installments that become due, including the interest on them.

The remedies provided herein for the collection of assessments and the enforcement of liens shall be deemed and construed to be cumulative and the use of any one method or means or remedy of collection or enforcement available at law or in equity shall not deprive the City or the trustee on behalf of the City, of the use of any other method or means. The amounts of accrued interest and all costs of collection, trustee's fees, attorneys' fees, and costs, shall be added to the amount of the assessment up to, and including, the date of foreclosure sale.

Section 8. Remedy of Default. If prior to the final date payment may be legally made under a final sale or foreclosure of property to collect delinquent assessments, or prior to the end of the three month reinstatement period provided by Section 57-1-31 in the event the collection is enforced through the method of foreclosing trust deeds, the property owner pays the full amount of all unpaid installments of principal and interest which are past due and delinquent with interest on such installments at the rate or rates set forth in Section 7 herein to the payment date, plus all trustee's fees, attorneys' fees, and other costs of collection, the assessment of said owner shall be restored and the default removed, and thereafter the owner shall have the right to make the payments in installments as if the default had not occurred. Any payment made to cure a default shall be applied first, to the payment of attorneys' fees and other costs incurred as a result of such default; second, to interest charged on past due installments, as set forth above; third, to the interest portion of all past due assessments; and last, to the payment of outstanding principal.

Section 9. Lien of Assessment. An assessment or any part or installment of it, any interest accruing and the penalties, trustee's fees, attorneys' fees, and other costs of collection shall constitute a lien against the property upon which the assessment is levied on the effective date of this Ordinance. Said lien shall be superior to the lien of any trust deed, mortgage, mechanic's, or materialman's lien, or other encumbrance and shall be equal to and on a parity with the lien for general property taxes. The lien shall apply without interruption, change in priority, or alteration in any manner to any reduced payment obligations and shall continue until the assessment, reduced payment

obligations, and any interest, penalties, and costs on it are paid, notwithstanding any sale of the property for or on account of a delinquent general property tax, special tax, or other assessment or the issuance of a tax deed, an assignment of interest by Salt Lake County or a sheriff's certificate of sale or deed.

Section 10. Reserve Fund. The City does hereby establish a reserve fund (the "Reserve Fund") in lieu of funding a special improvement guaranty fund, as additional security for the Assessment Bonds. The Reserve Fund shall consist of two accounts— a debt service reserve account (the "Debt Service Reserve Account") and a capitalized interest account (the "Capitalized Interest Account"). The Debt Service Reserve Account shall not be funded initially but may be funded with \$1.00 or any amount in excess thereof as shall be necessary to sell the Assessment Bonds, but in no event shall the Debt Service Reserve Account be funded in an amount which exceeds the least of (a) ten percent (10%) of the proceeds of the Assessment Bonds determined on the basis of its initial purchase price to the public, (b) the maximum aggregate annual debt service requirement during any Bond Fund Year for the Assessment Bonds, and (c) 125% of the average aggregate annual debt service requirement for the Assessment Bonds (the "Debt Service Reserve Requirement"). The Debt Service Reserve Requirement shall be adjusted as property owners prepay their assessments in full, all as provided in the proceedings to be executed by the Council to authorize the issuance and sale of the Assessment Bonds (the "Bond Resolution"). The moneys on deposit in the Reserve Fund shall, upon the final payment of the Assessment Bonds, be applied to the final assessment payment obligation of the assessed properties. If the amounts on deposit in the Reserve Fund exceed the final assessment obligation, any excess amounts shall be paid by the City to the owners whose properties were subject to the final assessment payment obligation, as an excess assessment payment.

In the event the Debt Service Reserve Account is funded in the future and insufficient assessments are collected by the City to make the debt service payments on the Assessment Bonds, the City shall draw on the Debt Service Reserve Account to make up such deficiency. In the event the amount on deposit in the Debt Service Reserve Account is less than the Debt Service Reserve Requirement, adjusted from time to time, the City shall replenish the Debt Service Reserve Account as provided in the Bond Resolution. If the amount on deposit in the Debt Service Reserve Account exceeds the Debt Service Reserve Requirement adjusted from time to time, excess moneys shall be transferred to the Bond Fund established under the Bond Resolution to be applied pro rata toward the next assessment payment obligations coming due.

Section 11. Investment Earnings. Except as otherwise provided in Section 10, all investment earnings on the Reserve Fund shall be maintained in said Fund and applied in the same manner as the other moneys on deposit therein as provided in the Bond Resolution.

Section 12. Contestability. No assessment shall be declared invalid or set aside, in whole or in part, in consequence of any error or irregularity which does not go to the equity or justice of the assessment or proceeding. Any party who has not waived his objections to the same as provided by statute may commence a civil action in the court

with jurisdiction in West Valley City against the City to enjoin the levy or collection of the assessment or to set aside and declare unlawful this Ordinance.

Such action must be commenced and summons must be served on the City not later than thirty (30) days after the effective date of this Ordinance. This action shall be the exclusive remedy of any aggrieved party. No court shall entertain any complaint which the party was authorized to make by statute but did not timely make or any complaint that does not go to the equity or justice of the assessment or proceeding.

After the expiration of the thirty (30) day period provided in this section:

(a) The Assessment Bonds issued or to be issued against the Voluntary Assessment Area and the assessments levied in the Voluntary Assessment Area shall become incontestable as to all persons who have not commenced the action and served a summons as provided for in this section; and

(b) No suit to enjoin the issuance or payment of the Assessment Bonds, the levy, collection, or enforcement of the assessments, or in any other manner attacking or questioning the legality of the Assessment Bonds or assessments may be instituted in this state, and no court shall have authority to inquire into these matters.

Section 13. Notice to Property Owners. The City Treasurer is hereby authorized and directed to give notice of assessment by mail to the property owners in the Voluntary Assessment Area. Said notice shall, among other things, state the amount of the assessment and the terms of payment. A copy of the form of notice of assessment is available for examination upon request at the office of the City Recorder.

Section 14. All Necessary Action Approved. The officials of the City are hereby authorized and directed to take all action necessary and appropriate to effectuate the provisions of this Ordinance.

Section 15. Repeal of Conflicting Provisions. All ordinances or parts thereof in conflict with this Ordinance are hereby repealed.

Section 16. Publication of Ordinance. Immediately after its adoption, this Ordinance shall be signed by the Mayor Pro tem and Deputy City Recorder and shall be recorded in the ordinance book kept for that purpose. This Ordinance shall be published once in the Salt Lake Tribune, a newspaper published and having general circulation in the City, and shall take effect immediately upon its passage and approval and publication as required by law. A copy of this Ordinance shall also be posted on the Utah Public Notice Website (<http://pmn.utah.gov>).

PASSED AND APPROVED by the City Council, this June 23, 2015.

(SEAL)

By: _____
Mayor Pro tem

ATTEST:

By: _____
Deputy City Recorder

ASSESSMENT LIST

<u>Tax ID Number</u>	<u>Improvements</u>	<u>Owner</u>	<u>Method of Assessment</u>	<u>Assessment</u>
15-22-178-022-0000	All Improvements	Hunt 1920 LLC	Per Parcel	\$100,500

BEGINNING 368.876 FEET NORTH AND 1444.369 FEET EAST FROM THE WEST QUARTER CORNER OF SECTION 22, TOWNSHIP 1 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 227.065 FEET; THENCE SOUTH 88°23' EAST 120.16 FEET; THENCE SOUTH 272.34 FEET; THENCE 89 °41'33" WEST 150.00 FEET TO THE POINT OF BEGINNING.

BASIS OF BEARING: MONUMENT LINE BETWEEN POINT OF INTERESECTION MONUMENTS LOCATED ON ALEXANDER STREET WICH IS 89 °41'33" EAST, AS DISCLOSED BY DEDICATION PLAT OF ALEXANDER STREET RECORDED IN BOOK 86-7 OF PLATS AT PAGE 114, SALT LAKE COUNTY RECORDER'S OFFICE

THE REAL PROPERTY OR ITS ADDRESS IS COMMONLY KNOWN AS 1920 WEST ALEXANDER STREET, WEST VALLEY CITY, UT 84119. THE REAL PROPERTY TAX IDENTIFICATION NUMBER IS 15-22-178-022-0000.